

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 17, 2009 Session

IN THE MATTER OF: C.L.D., C.D.D., AND C.G.D.

**Appeal from the Juvenile Court for Putnam County
No. 875 TPR John P. Hudson, Judge**

No. M2008-02805-COA-R3-PT - Filed June 15, 2009

Mother appeals the termination of her parental rights to her three children. The trial court terminated Mother's parental rights on multiple grounds, including failure to remedy persistent conditions and abandonment by engaging in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the children, and upon the finding that termination of her parental rights was in the children's best interests. The evidence clearly and convincingly supports the trial court's finding on the ground of abandonment of all three children, and upon the finding that termination of Mother's parental rights was in the children's best interests. As to the oldest two children, the evidence also clearly and convincingly supports the trial court's findings that Mother failed to remedy persistent conditions. Accordingly, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed in Part, Reversed in Part**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Matthew A. Jared, Cookeville, Tennessee, for the appellant, Mother.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Jill Z. Grim, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

Mother's two oldest children, C.G.D. and C.D.D., first came to the attention of the Department of Children's Services on May 22, 2006, when the Department investigated a referral involving the children at the home of Mother's grandmother. Mother had left the children in the care of their great-grandmother because Mother was incarcerated.¹ At the time, C.G.D. (hereinafter

¹ Mother was incarcerated in the Putnam County jail from May 8, 2006, through October 28, 2006.

“Cooper”) was four years old and C.D.D. (hereinafter “Conan”)² was two years old. The investigating caseworker found the great-grandmother’s home to be “extremely deplorable and extremely inappropriate for the children” and further reported that

[t]here were massive amounts of bugs and roaches. The tops of the ceiling looked like it was dirt, but it was actually roaches covering the ceiling. There was an odor that would literally make you sick coming from the home. There was trash in the home. There was bugs all in the kitchen. There couldn’t be no food out on the counters because of the amounts of roaches. There was also a male, mentally-limited man, who was half exposed with his genitals hanging out while the children were in the home. There was what appeared to be human feces in the floor of the apartment. . . . The children appeared as if they had not had a bath in many, many days, even weeks. They were extremely dirty.

The grandmother admitted that she could not take care of Cooper and Conan due to her health and the uncertainty of when Mother would be released from jail.³ As a result, a protective custody order was issued, and Cooper and Conan were removed. Because of the filthy conditions from which the children were removed, the caseworker only permitted the children to bring the clothes they were wearing and their backpacks. Nevertheless, roaches were found in the van that transported the children to the Department’s office.

When Cooper and Conan were removed, Cooper, who was almost five years old at the time, was wearing pull-up diapers and both children were basically nonverbal and appeared to have developmental delays. Cooper and Conan were immediately placed with foster parents, where they remain to this date. The foster mother described the children’s hygiene as very poor, explaining that they were very dirty and that it took “three baths a day to get them clean.” Cooper had been using a moldy pacifier, and both children tried to eat food out of the garbage or off the floor until instructed not to do so by the foster parents.

Mother and the Department developed four sets of permanency plans for Cooper and Conan; the first set was put into place on June 8, 2006, while Mother was still incarcerated, with the sole goal of reunification. Mother agreed to show that she could meet the children’s basic needs and was to: (1) obtain verifiable, legal income; (2) maintain a safe and suitable home for at least three months; (3) obtain prenatal care, since she was then pregnant with her third child; (4) resolve her legal issues and acquire no new charges; and (5) obtain reliable transportation with proper child restraints. Mother also agreed to pursue a graduate equivalency degree (GED), create a budget to ensure her bills were paid, obtain a mental health assessment, maintain a bond with the children by

²“Cooper” and “Conan” are fictitious names for Mother’s two oldest children. The fictitious names are used in this opinion to protect the identities of the children and because the initials provide for cumbersome and confusing reading.

³Although only in her twenties at the time, Mother had a long history of criminal charges and incarcerations, primarily for fraud and worthless checks.

visiting regularly when not in jail, interact appropriately with the children at all times, and accompany the children to all of their medical, dental, and counseling appointments.

To assist Mother in the goal of reunification, the Department provided Mother with a mental health assessment, counseling, and parenting classes; employment assistance; counseling for the children; DNA testing to determine the children's paternity; and regular, supervised visitation with the children, including eight months of therapeutic visitation services and parenting assistance. The Department also paid Mother's past utility bills so she could obtain utilities in a new apartment and provided transportation and gas cards so that Mother could get to her probation appointments, medical and counseling appointments, and Department meetings. In-depth evaluations were also provided for Cooper and Conan at a center in Chattanooga, which Mother was encouraged to attend and accompany the children. Mother, however, only attended one of eight appointments.

In addition to providing Mother services to reunite her with Cooper and Conan, the Department assisted Mother with the care of her third child, C.L.D. ("Cody")⁴, who was born December 18, 2006, two months after Mother was released from prison. The Department paid for Cody's daycare and purchased and assembled a crib for him when the Department discovered that the child was either sleeping in a bassinet that was too small for him or with Mother, both of which presented safety concerns. Mother, however, did not move Cody's new bed to her apartment when she moved and, again, slept with Cody in her bed. As a result, the caseworker again addressed the safety concerns with Mother and alerted the "Help Us Grow Successfully" (HUGS) program.

Mother attended parenting classes from November 2006 through January 2007. Unfortunately, Mother spent a majority of the time talking about her frustrations with the Department and identifying others the Department should be investigating other than her. For example, when the counselor would suggest how to handle a particular situation, Mother would change the topic to how the Department was singling her out. Mother was argumentative and did not feel that she needed parenting classes.

A second set of permanency plans was developed for Cooper and Conan in November 2006, with the goals of reunification and adoption. Mother agreed to maintain a safe and stable home for at least three months and provide rent and utilities verifications, demonstrate proper parenting skills and hygiene with the children, follow the recommendations of her parenting assessment, ensure that the children were properly supervised, obtain a licensed child care provider, and develop an emergency care plan for the children. Further, Mother agreed to not associate with persons with substance abuse problems or subject the children to environmental hazards or to any persons who would cause concern for the children's safety. The Department was also allowed to make announced and unannounced home visits, and Mother was to resolve all criminal charges, not acquire new ones, and notify the Department immediately if she became incarcerated.

⁴"Cody" is a fictitious name for Mother's youngest child.

Mother's caseworker noted a drastic difference in the condition of Mother's home during announced and unannounced visits. During a scheduled visit, Mother's home was generally clean. But, during an unannounced visit there were dirty diapers and feces on the floor and garbage strewn throughout the kitchen.

A third set of permanency plans was developed in May 2007 with requirements and goals similar to the previous plans. In November 2007, a fourth set was developed with the same goals but with the additional requirement that Mother demonstrate the ability to care for all three children during supervised visitations. The youngest child, Cody, was still in Mother's custody at the time and attended the supervised visits with Mother and the two oldest children.

Due to concerns with Cody's development, the Department enlisted the HUGS program to work with Mother beginning in March 2007. HUGS worker Ms. Lillian Bana expressed concerns with Mother's bonding with Cody after observing that Mother never made eye contact with Cody and held him away from her when feeding him. While Mother appeared receptive to Ms. Bana's suggestions, her behavior never changed. Similarly, Ms. Bana explained to Mother the importance of reading to Cody, playing with him, and putting him on the floor so he could learn to sit, crawl, and develop other motor skills. Because of his low weight, Mother was also instructed on proper feeding and how to thicken cereal. Ms. Bana continued to work with Mother until December 2007, when she was no longer able to contact Mother.

Despite Ms. Bana's instruction, Mother often left Cody in a car carrier or crib by himself during therapeutic visitations from February through September 2007. Additionally, while Mother appeared to have a bond with her oldest child, Cooper, she interacted very little with Conan unless disciplining him or getting him to eat. Conan, who had severe behavioral problems when he first entered the Department's custody, including throwing chairs at school, had improved while in foster care. But, Conan's behavior would again be problematic after visitation with Mother. As a result, visitations were rescheduled from Wednesdays to Fridays to alleviate the problems in school.

Beginning in February 2007, Mother attended counseling with therapist Abby Eibel. Although Ms. Eibel stressed the importance of honesty, Mother resisted Ms. Eibel's efforts and withheld information. Mother was given homework assignments, and although she promised to complete them, Mother always had an excuse as to why she did not do them. Mother expressed to Ms. Eibel that she accepted no responsibility for her role in her children's placement in the Department's custody or what was needed to get them back, and, as a result, Mother never made any significant progress in her counseling. Ultimately, Ms. Eibel discharged Mother from her counseling in May 2007 after she missed an appointment and never rescheduled.

In May 2007, Mother and Cody were at Cookeville Hospital and met Judy Ellis. Mother asked Ms. Ellis, who was a complete stranger to Mother, for a ride home. Within ten days, Mother was asking and allowing Ms. Ellis to care for Cody in her home. Over the course of the next two months, Ms. Ellis took Cody to the doctor, bought him diapers, and went and picked up Cody when Mother called and said she needed someone to come and care for Cody. Alarmed by Mother

allowing a stranger to care for her child, Ms. Ellis contacted the Department six or seven times over the course of the next two months. Similarly, during a therapeutic visitation at Monterrey Park, Mother left Cody with a complete stranger while she went to the restroom when she could have just as easily left the child with the Department's caseworker.

Around the same time that Mother first met Ms. Ellis, a Department facilitator investigating referrals for Cody found Mother with her stepfather,⁵ a known alcoholic with a lengthy criminal record. In addition to being Mother's stepfather, the stepfather was also the father of Mother's oldest child, Cooper. Because of the inappropriate relationship between Mother and the stepfather, which started when Mother was only sixteen years old, the Department instructed Mother that she should not permit the stepfather to have any contact with her youngest child, Cody. After finding Mother with the stepfather after having been told to keep him away from Cody, the Department obtained a restraining order to keep the stepfather away from Cody. That order was issued on May 23, 2007. Nevertheless, a caseworker thereafter found the stepfather at Mother's apartment in violation of the restraining order.

In November 2007, Mother twice saw Dr. Carole Lovell, a licensed clinical social worker. The Department requested Dr. Lovell work with Mother on her personality disorder. Unfortunately, Dr. Lovell was unable to make progress with Mother with only two appointments. Mother, however, failed to report for further appointments even though Dr. Lovell wanted to continue seeing Mother in group therapy.

Mother, who had been on probation in Jackson County since February 2007 for writing worthless checks, had a violation of probation filed against her on November 29, 2007. The violation arose out of Mother's failure to pay court costs and restitution. Mother's probation required her to find a place to live, but she only gave her probation officer the address for a trailer across from a junk yard several miles outside of town. Mother never gave the probation officer the name of her landlord or showed him a lease. The probation officer talked with Mother numerous times about the possibility of looking somewhere else, citing the appropriateness for her children. As of the second day of the hearing on the petition to terminate parental rights, Mother still had not had the electricity or phone service connected.

On December 4, 2007, Mother was arrested on six active warrants for worthless checks from May and June 2007 and sentenced to seventy days in the Putnam County Jail. The stepfather was at Mother's apartment at the time of her arrest. At that time, Cody was placed in the Department's custody in the same foster home as his brothers. A permanency plan was created for Cody on January 11, 2008, with the sole goal of adoption.

The Department filed a petition to terminate Mother's parental rights to all three children on the grounds of abandonment, substantial non-compliance with the permanency plan, persistent

⁵ If we reveal the identity of Mother's stepfather it would be easy to identify Mother and, therefore, the children. Accordingly, to maintain their anonymity, we identify him as the stepfather.

conditions, and mental incompetence. A hearing on the petition was held on June 10 and July 1, 2008. On September 11, 2008, the juvenile court orally ruled that Mother's parental rights were terminated on all grounds asserted and that termination was in the children's best interests.⁶ An order terminating parental rights was entered on December 19, 2008.

Mother appeals challenging the sufficiency of the evidence establishing grounds for termination and the best interests of the children.⁷

ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination, such as abandonment or failing to remedy persistent conditions that led to the removal of the child. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838. Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to proving one of the grounds for termination, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). Therefore, a court may terminate a person's parental rights if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is clearly and convincingly established that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed de novo with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at *2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810). The issue of

⁶The fathers' parental rights were also terminated. Neither father perfected an appeal; therefore, neither is a party to this appeal.

⁷Mother challenges all the grounds for termination found by the trial court; however, our ruling as to persistence of conditions and abandonment renders the other grounds moot as only one ground for termination must be proven. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003).

substantial noncompliance with the requirements of a permanency plan is also a question of law; therefore, it is reviewed de novo with no presumption of correctness. *In re Valentine*, 79 S.W.3d at 546 (citing *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002)).

ABANDONMENT

A parent's rights may be terminated on the ground of abandonment. Tenn. Code Ann. § 36-1-113(g)(1). The statute defines abandonment, in relevant part, as follows:

A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child.

Tenn. Code Ann. § 36-1-102(1)(A)(iv) (emphasis added).

This court has stated that Tenn. Code Ann. § 36-1-102(1)(A)(iv) “reflects the commonsense notion that parental incarceration is a strong indicator that there may be other problems in the home that threaten the welfare of the child.” *In re Audrey S.*, 182 S.W.3d 838, 866 (Tenn. Ct. App. 2005). Ultimately, “[a] parent’s decision to engage in conduct that carries with it the risk of incarceration is itself indicative that the parent may not be fit to care for the child.” *Id.* But, the second test for abandonment under Tenn. Code Ann. § 36-1-102(1)(A)(iv) does not make incarceration alone a ground for abandonment. Under the second part of the test, an incarcerated or recently incarcerated parent can be found guilty of abandonment “only if the court finds, by clear and convincing evidence, that the parent’s pre-incarceration conduct displayed a wanton disregard for the welfare of the child.” *Id.* Accordingly, a parent’s incarceration serves “as a triggering mechanism that allows the court to take a closer look at the child’s situation to determine whether the parental behavior that resulted in incarceration is part of a broader pattern of conduct that renders the parent unfit or poses a risk of substantial harm to the welfare of the child.” *Id.*

The pre-incarceration conduct referred to in Tenn. Code Ann. § 36-1-102(1)(A)(iv) is *not* limited to acts during the four-month period immediately preceding the incarceration. *In re Jeremiah T.*, No. E2008-02099-COA-R3-PT, 2009 WL 1162860, at *8 (Tenn. Ct. App. Apr. 30, 2009) (no Tenn. R. App. P. 11 application filed) (citing *In re Audrey S.*, 182 S.W.3d at 871). It is well-established that probation violations, repeated incarceration, criminal behavior, substance abuse, and the failure to provide adequate support or supervision for a child can, alone or in combination, constitute conduct that exhibits a wanton disregard for the child’s welfare. *In re Audrey S.*, 182 S.W.3d at 868 (citing *State Dep’t of Children’s Servs. v. J.M.F.*, No. E2003-03081-COA-R3-PT,

2005 WL 94465, at *7-8 (Tenn. Ct. App. Jan.11, 2005) (perm. app. denied Tenn. Mar. 21, 2005); *In re C. LaC.*, No. M2003-02164-COA-R3-PT, 2004 WL 533937, at *7 (Tenn. Ct. App. Mar.17, 2004) (no Tenn. R. App. P. 11 application filed); *In re C.T.S.*, 156 S.W.3d 18, 25 (Tenn. Ct. App.2004); *In re C.W.W.*, 37 S.W.3d 467, 474-75 (Tenn. Ct. App. 2000)).

In this case, it is undisputed that Mother was incarcerated at the time the Department filed for termination of Mother's parental rights on the ground of abandonment as provided in Tenn. Code Ann. § 36-1-102(1)(A)(iv). Therefore, at issue here is whether there is clear and convincing evidence that Mother's conduct prior to incarceration exhibited a wanton disregard for the welfare of her children. The trial court found that there was clear and convincing evidence that Mother's pre-incarceration conduct exhibited a wanton disregard for the welfare of her three children. On appeal, we agree.

Mother was serving a five-month sentence in jail for writing worthless checks at the time Cooper and Conan were placed in the Department's custody in May 2006. At that time, although Mother was only in her early twenties, she had extensive history of criminal charges and incarcerations, including being arrested approximately forty-seven times. In addition, Mother, who was on probation in Jackson County for writing worthless checks, was found to be in violation of her probation on November 29, 2007. Mother was again arrested on December 4, 2007, on six active warrants for worthless checks written from May and June 2007, which resulted in her youngest child being placed in the Department's custody. Likewise, Mother remained jailed until February 2008.

In addition to Mother's extensive and continued criminal history, she also failed to properly care and supervise her children. When Cooper and Conan were taken into custody while Mother was jailed in 2006, Mother had left them in a home with deplorable and inappropriate conditions. Further, Mother left the two children with her grandmother who, admittedly, was unable to care for them. On several different occasions, Mother left her youngest child, Cody, in the care of complete strangers. Most egregiously, Mother has refused to obey the court's protective order prohibiting Cody from being in the presence of the stepfather.

The trial court found that Mother had abandoned her children "pursuant to Tenn. Code Ann. § 36-1-113(g)(1) and Tenn. Code Ann. § 36-1-102(1)(A)(iv) in that she engaged in conduct prior to incarceration that was in wanton disregard for the welfare of the children." The evidence clearly and convincingly supports this conclusion, and, therefore, we affirm the trial court's finding and conclusion that Mother abandoned the children pursuant to Tenn. Code Ann. § 36-1-113(g)(1) by engaging in conduct that exhibited a wanton disregard for the welfare of the children.

PERSISTENT CONDITIONS

Tenn. Code Ann. § 36-1-113(g) states that "[i]nitiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection." (Emphasis added). One of the grounds for termination of a parent's rights included in that subsection states:

The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3) (emphasis added).

Tenn. Code Ann. § 36-1-113(g) clearly states that the *initiation* of termination of parental rights may be based on the ground that *the child has been removed* from the parent's home for a period of *six months* and certain conditions still exist. The initiation of the termination of parental rights begins with the filing of the petition. *See* Tenn. R. Civ. P. 3.

Mother's youngest child, Cody, was removed from her custody on December 4, 2007. The petition to terminate Mother's parental rights was filed on January 17, 2008. Thus, Cody had only been removed from Mother's custody for a little over a month when the petition to terminate Mother's parental rights was filed. Tenn. Code Ann. § 36-1-113(g) requires, *inter alia*, that the child have been removed for a period of six months before the initiation of the termination proceedings. The petition to terminate Mother's parental rights as to Cody was filed before the expiration of the requisite six-month period. Accordingly, the ground of persistence of conditions under Tenn. Code Ann. § 36-1-113(g) is not available as it pertains to Mother's parental rights to Cody. We, therefore, reverse the trial court's ruling that Mother's parental rights to Cody may be terminated on the ground of persistence of conditions.

Cooper and Conan were taken into custody more than a year prior to the filing of the petition to terminate Mother's parental rights. Accordingly, the ground of persistence of conditions under Tenn. Code Ann. § 36-1-113(g) is available if the evidence clearly and convincingly establishes that the reasons for the removal of Cooper and Conan still exist, there is little likelihood that these conditions will be remedied at an early date so that Cooper and Conan can be safely returned to Mother in the near future, and the continuation of the parent child relationship greatly diminishes Cooper's and Conan's chances of early integration into a safe, stable and permanent home. *See* Tenn. Code Ann. § 36-1-113(g)(3).

The Department instituted a multitude of services once Mother was released from jail to assist her in regaining custody of the two children. Mother was provided with psychological assessments, counseling services, parenting classes, employment assistance, and transportation. Although Mother participated in the assessments and counseling, she hindered the Department's efforts to reunify her with the children by spending her time venting about the Department and other parents who should be under the Department's supervision. Mother also withheld information from her counselor, failed to complete homework assignments, and missed appointments she failed to reschedule.

The children came into custody while Mother was in jail for writing worthless checks, which she continued to do after she was released. While the children were in the Department's custody, Mother violated her probation and was arrested again for six outstanding warrants, which resulted in Cody being placed in the Department's custody. Mother disobeyed a court-imposed order prohibiting Cody from being in the presence of the stepfather, which she disobeyed multiple times.

Mother has a history of not having stable and safe housing. While Cooper and Conan were in custody, Mother continued to live with her grandmother and others. When she did get her own place, she would only stay there a few nights a week. Unscheduled visits to her home revealed conditions that were much worse than when the visits were scheduled. As of the date of the hearing on the petition to terminate parental rights, Mother still did not have suitable housing for her or her children. Although Mother claimed to have leased a trailer she would move into that day, she admitted that she had not yet turned on all the utilities.

Despite extensive efforts by the Department as outlined above, conditions still persisted at the time of trial that prevented Cooper and Conan's safe return to the care and custody of Mother. Accordingly, we affirm the trial court's finding that Mother's parental rights to Cooper and Conan may be terminated on the ground of persistence of conditions.

THE CHILDREN'S BEST INTERESTS

The trial court also found that termination of Mother's parental rights was in the children's best interests. In determining whether termination of parental rights is in the best interests of a child, the court is to consider certain statutory factors, including the following:

- (1) Whether the parent . . . has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent . . . ;
- (2) Whether the parent . . . has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

- (3) Whether the parent . . . has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent . . . and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent . . . , or other person residing with the parent . . . , has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's . . . home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent . . . consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's . . . mental and/or emotional status would be detrimental to the child or prevent the parent . . . from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent . . . has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i).

When the oldest two children were first placed in foster care, they were living in deplorable conditions, eating out of the garbage and off the floor, and Cooper was sucking on a moldy pacifier. Cooper and Conan both had speech and learning deficiencies. But, after only a year with the foster family, the children showed remarkable improvement. Cooper's kindergarten teacher testified that his speech and academics have improved, that he can read sentences, and that he has all the skills he needs to be successful in the first grade. Conan's headstart teacher testified that he has turned into almost a "different child" by the end of the school year. After visitations with Mother, however, Conan would be more withdrawn and clingy.

As for Cody, he was underweight when he first went into custody but is now a healthy, walking, and happy baby. All three children have a bond with the foster parents, who love them and wish to adopt them. The two oldest children have been with the foster family for the past three years, and the youngest has spent half of his young life with the foster family. Although the Department has provided ample assistance to Mother, she has failed to establish bonds with Conan or Cody. Mother's counselors have testified that she is unwilling to accept blame or fault for her children being taken into custody.

Mother has repeatedly been incarcerated for the same criminal behavior, and she has violated her probation. As of the date of the hearing on the petition to terminate parental rights, Mother has not established a suitable home for the children. She has repeatedly violated the court's order to keep Cody away from the stepfather, who is a threat to the health and welfare of the children. Mother has left Cody with strangers on multiple occasions, and she has never paid child support.

Considering the relevant statutory factors regarding the best interests of the children, a reasonable person could only come to one conclusion, that it is no longer in the best interests of the children to continue this parent-child relationship. More than two years after the oldest two children had been put into custody, Mother has failed to secure suitable housing for herself or the children, and, as the trial court correctly found, Mother has "not made an adjustment of circumstances, conduct or conditions as to make it safe and in the children's best interest" to be in Mother's home. Mother's repeated criminal behavior and incarcerations would be detrimental to the children and would prevent her from effectively providing safe and stable care and supervision for the children. Moreover, all three children are together and in a stable and loving environment with foster parents who desire to adopt the children, and a change of caretakers and physical environment is very likely to have a significant adverse effect on the children's emotional condition. We, therefore, affirm the trial court's finding that termination of Mother's parental rights is in the best interests of all three children.

IN CONCLUSION

The evidence clearly and convincingly supports the trial court's findings that Mother abandoned all three of her children by engaging in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the children. The evidence also clearly and convincingly supports the trial court's findings that Mother failed to remedy the conditions for which Cooper and Conan were removed. Therefore, the Department has proven one statutory ground upon which Mother's parental rights may be terminated as to all three children and two grounds upon which her parental rights may be terminated as to Cooper and Conan. The evidence in the record also clearly and convincingly supports the trial court's finding that termination of Mother's parental rights is in the best interests of all three children. We, therefore, affirm the termination of Mother's parental rights as to all three children.

This matter is remanded with costs of appeal assessed against the Department of Children's Services, due to Mother's indigency.

FRANK G. CLEMENT, JR., JUDGE